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LAW ENFORCEMENT SEMINARS, PUBLICATIONS AND PROFESSIONAL SERVICES

E-BULLETIN # 1

Liability Prevention and Legal Risk Management In Field Law Enforcement

**By
Randy Means**

General Introduction to Civil Liability and Legal Risk Management

This is the first of T&M's Law Enforcement Liability Prevention and Risk Management E-Bulletins. It contains only introductory and general information. Our subsequent E-Bulletins will focus more particularly on specific issues, including case law developments. They will typically be short and sweet, like this one.

The author of this E-Bulletin has more than 30 years of full-time experience in evaluating the use of police authority, and in helping to defend officers and agencies against claims of misconduct. He devotes 100% of his professional time and energy to making sure that bad things don't happen to law enforcement officers. He has no other personal or professional agenda. Following are ten things he recommends that law enforcement leaders make sure their officers know, positively.

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1. There are a variety of legal risks associated with field law enforcement; they include civil liability, criminal prosecution of police officers, and exclusion (suppression) of evidence determined to be “fruit of a poisoned tree.” Naturally, legal problems can also cause administrative repercussions – disciplinary actions against officers, the undoing of careers.
2. It is critical that officers know the extents and limits of their legal authority so that they can maximize their effectiveness and reduce their exposure to legal risks. All law enforcement officers should have a major interest in legal risk management.
3. Lawsuits and other legal “problems” usually are at best aggravating, stressful and time consuming; at worst they can ruin careers, wreck lives, and even send law enforcement officers to prison. Whoever said “if somebody wants to sue me, let ‘em just get in line” probably hadn’t been sued.
4. When we are sued civilly, our financial costs (attorneys fees, litigation expenses, and even costs of a negative outcome (adverse judgment, money damages), are usually paid entirely by our liability insurance or other funds provided by our employing agency – but lawsuits still cost us, in staff time and energy, frustration and stress, and increased professional liability insurance premiums, among other things.
5. The fewer lawsuits we have, the more our funds can go to positive measures – like salaries, equipment and employment benefits.
6. Generally speaking, the only time a civil lawsuit will reach the personal financial assets of an officer or damage his or her personal credit is if the officer is hit with punitive damages; these occur (typically) when an officer is found to have acted maliciously, grossly negligently, or in a knowingly or intentionally illegal way.
7. Improper police work can put an officer in jail. It is a federal felony for an officer to knowingly or intentionally violate someone’s constitutional rights; high speed vehicle operation can lead to injury and death which can cause the criminal prosecution of police officers under state law; clearly excessive force by officers is not only a federal crime, it usually constitutes a state law crime – typically criminal assault and/or battery.

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8. There are a great variety of field law enforcement activities that cause legal “problems”, but the most likely to do so are high speed vehicle operation, use of force, and other search and seizure (Fourth Amendment) matters – especially nonconsensual entry into private premises.

9. In many of the most disastrous civil and criminal liability cases, the least tragic aspect of the case is our financial loss; major civil liability and criminal prosecution of police officers most often occurs when an innocent person has been severely injured or killed.

10. Good News: The more predictable our problems are, the more preventable they become. In law enforcement, there is often a positive (but not good) statistical correlation between activity and negativity; the more things (of consequence) we do, the more legal risks we experience. We cannot eliminate legal risks from law enforcement work, but we can manage it, minimize it – *without* sacrifice of overall professional effectiveness, individual or organizational.